FILED.
SEP 27 1907
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

NO. 102.

THE MISSOURI VALLEY LAND COMPANY AND THE IOWA RAILROAD LAND COMPANY,
Plaintiffs in Error,

vs.

CARSTEN WRICH, Defendant in Error.

MOTION TO DISMISS OR AFFIRM, AND BRIEF.

JAMES H. VAN DUSEN,
EDWARD F. COLLADAY,
Attorneys for Defendant in Error.

In the Supreme Court of the United States.

THE MISSOURI VALLEY LAND COMPANY AND THE IOWA RAILROAD LAND COMPANY,
Plaintiffs in Error,

vs.

CARSTEN WRICH,
Defendant in Error.

No. 102.
October Term,
1907.

Motion to Dismiss or Affirm.

Comes now Carsten Wrich, defendant in error herein, and moves the Court to dismiss the writ of error in this case for want of jurisdiction, because the writ of error herein was not allowed by the Chief Justice of the Supreme Court of Nebraska and it does not appear in the record by what authority the Judge who allowed the writ styles himself "Presiding Judge of the Supreme Court of Neb.", and because there is no Federal question involved in said cause; or if the writ of error shall not be dismissed, that the judgment of the Supreme Court of the State of Nebraska be affirmed on the ground that, although in the opinion of this Court the record may show that this Court has jurisdiction, it is manifest that the said writ of error was taken

for delay only and that the question on which the jurisdiction depends is so frivolous as not to need further argument.

JAMES H. VAN DUSEN,
EDWARD F. COLLADAY,
Counsel for Carsten Wrich, Defendant in Error.

BRIEF.

This case is in all respects similar to the case of the Missouri Valley Land Company and Iowa Railroad Land Company vs. Asmus Wiese, No. 101, October term 1907, the facts, motions to dismiss, and briefs in both cases being similar.

As to the first point raised in the motion, the writ of error herein was allowed in the first instance by "Chas. P. Letton, Justice of the Supreme Court of the State of Nebraska," and at a later date, an additional signature was added as follows: "John B. Barnes, Presiding Judge of Supreme Court of Neb. in absence of Sedgwick, C. J., from this State." There is no certificate or other evidence in the record to support this signature and the recital appended as a part thereof. It is not shown that the Chief Justice was absent from the State, nor that Judge Barnes was the judge having the next shortest term and thereby presiding judge. When the writ was served upon counsel for defendant in error he stated over his signature (Record p. 67) that he reserved all rights to take advantage of defects. Under the statement of this Court in the next to the last paragraph of the opinion in Havnor v. New York (170 U. S., 411) we think the writ was not properly allowed.

A perusal of the second amended petition (Record, pp. 10 and 11), and cross petition (record, pp. 12–15), and opinion of lower court (record, p. 64), will show at once that there is no Federal question involved in this case. It is merely a suit to quiet title brought by one of two tenants in common against the other, both of whom base their claims of title upon the same grant from the United States, the plaintiff (defendant in error) claiming title against his co-tenant by adverse possession. We think the decision of this Court in Corkran Oil Company v. Arnaudet (199 U. S., 182), settles the question here presented. Also in the case of Dibble v. Bellingham Bay Land Company, (163 U. S., 74), where the litigants claimed title under the same grant from the United States and one brought suit against the other to quiet title, claiming against the other by adverse possession, this Court held there was no Federal question.

As to the remaining point in the motion, the only shadow of a Federal question in this case is that both parties trace their claims of title to the original grantees from the United States under an Act of Congress, the one claiming that the title of the United States was fully divested by the grant, and the other claiming that the title was suspended until patent actually issued. The Supreme Court of Nebraska found that the conditions of the Acts of Congress of July 1, 1862, and July 2, 1864, were fully complied with, and has decided as a consequence that title passed immediately upon compliance with those conditions. That those conditions were complied with is not a point in dispute in this case. The plaintiff in error in this case contends, in effect, that although the terms of the grants from the United States were complied with prior to January 1, 1870, the title remained in the United States until the issuance of the patent July 24, 1903, and that contention,

we respectfully insist, is frivolous. A patent is merely evidence of a grant; it adds nothing to the grantee's rights, but only furnishes him with convenient proof thereof.

Carroll v. Safford, 3 How. 441;
Railway Co. v. Prescott, 16 Wall. 603;
Railway Co. v. McShane, 22 Wall. 444;
Simien v. Perrodin, 35 La. Ann. 931;
Barney v. Dolph, 97 U. S., 652;
Stark v. Starrs, 6 Wall. 402.
Moran v. Horsky, 178 U. S., 212;
Joplin v. Chachere, 192 U. S , 94. 98;

"The execution and delivery of the patent after the right to it had become complete were the mere ministerial acts of the officers charged with that duty. * * * The State courts could properly hold under the circumstances of this case that the Statute of Limitations was set in motion when that right accrued, and was not postponed to the issue of the patent." Dibble v. Bellingham Bay Land Company (163 U. S., 74).

"Adverse possession under claim of right for the period prescribed by the Statute of Limitations of the State of Utah, after the act granting the land and before a patent has been issued by the United States to the Central Pacific Railroad Company for a part of its land within that State, and not within its right of way, will prevail against the patent."

Toltec Ranch Company v. Cook, (191 U. S. 532).

Respectfully submitted,

JAMES H. VAN DUSEN,
EDWARD F. COLLADAY,
Attorneys for Defendant in Error.

September 18, 1907.

MISSOURI VALLEY LAND COMPANY *v.* WRICH.

ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

No. 102. Argued January 10, 1908.—Decided February 3, 1908.

Decided on authority of *Missouri Valley Land Co.* v. *Wiese*, *ante*, p. 234.

THE facts are stated in the opinion.

Mr. Charles A. Clark for plaintiff in error.

Mr. James H. Van Dusen, with whom *Mr. Edward F. Colladay* was on the brief, for defendant in error.[1]

MR. JUSTICE WHITE delivered the opinion of the court.

This case was argued with *Missouri Valley Land Co.* v. *Wiese*, No. 101, of this term, just decided, *ante*, p. 234, and in all essential particulars the two cases are alike. Wrich purchased his land in 1881 from the Union Pacific Railroad Company and received his deed in 1890. The land lay within overlap grants to the Union Pacific Company and the Sioux City and Pacific Railroad Company. Wrich took possession immediately after his purchase, and ever afterwards held and claimed the land as his own. In September, 1893, he under-

[1] For abstracts of arguments see *ante*, p. 234.

took to make a cash entry of the land under the act of 1887, as did his neighbor Wiese. All the questions involved in the *Wiese case* are present in this, and, for the reasons given in the opinion in the former, the judgment of the Supreme Court of Nebraska in this case must be

Affirmed.